HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No. 635 of 2004

Between:

The Agent to Government and Collector,

Visakhapatnam and another

.. Appellants

AND

Bayyapureddy Appala Naidu and others

..Respondents.

Counsel for the Appellants: Government Pleader for Social

Welfare

Counsel for the Respondents: None

Dated: April 21, 2006

JUDGMENT:

Per Sri G.S.Singhvi, C.J.

This appeal is directed against order dated 1-7-2003 passed by the learned Single

Judge whereby he allowed the writ petition filed by respondent No.1 and quashed order dated 3-7-1994 passed by Agent to Government and Collector, Visakhapatnam in A.S.No. 67 of 1988.

Respondent No.1 is said to have purchased land measuring Ac.5-58 cents from Batchala Sanyasi and others by sale deed dated 11-5-1956 and got the same registered on 14-4-1956. After 14 years, respondent No.3 and others filed an application before Agency Divisional Officer-cum-Special Deputy Collector (Tribal Welfare), Paderu (respondent No.2) for grant of a declaration that purchase of land by respondent No.1 was nullity because the vendors belong to Schedule Tribe and the purchaser was a non-Tribal. By an order dated 24-12-1979 passed in LTR No. 501 of 1979, respondent No.2 declared the transaction of sale between the petitioner (respondent No.1 herein) and Batchala Sanyasi and others as void. On appeal, Agent to Government and Collector, Visakhapatnam (respondent No.1) remanded the matter to respondent No.2. The latter, vide his order dated 13-5-1986, again declared the sale transaction as void. Respondent No.1 challenged that order by filing an appeal, which was registered as A.S.No. 67 of 1988. During the pendency of the appeal, Batchala Sanyasi died and his legal representatives were brought on record. Thereafter, by an order dated 3-7-1994, appellant No.1 dismissed the appeal preferred by respondent No.1. That order was quashed by the learned Single Judge in Writ Petition No.15761 of 1994. The learned Single Judge held that there was unreasonable delay in the initiation of proceedings and, therefore, the declaration of nullity granted by respondent No.2 qua the sale transaction of 1956 was liable to be set aside. For taking this view, the learned Single Judge relied on the judgment of the Supreme Court in **Deputy Collector and another v. S. Venkata Ramanaiah and another.**

Learned Government Pleader for Social Welfare made half-hearted attempt to convince us that the provisions of the Agency Tracts Interest and Land Transfer Act, 1917 were applicable to the transaction involving the predecessors of respondents 3 to 7 and the writ petitioner because the former did not belong to Hill Tribe as defined in the Act, but we have not felt impressed.

In the order under challenge, the learned Single Judge referred to the relevant provisions of the Act and concluded that the original authority as well as the appellate authority committed an error by setting aside the transfer of land by presuming that the transaction was hit by the bar under Section 7 of the 1917 Act.

This is evinced from the following extracts of the order under challenge.

> "The Agency Tracts Interest and Land Transfer Act, 1917, in pith and substance, is an Act to regulate the rate of interest on the transfer of land in Ganjam, Vizagapatnam and Godavari Agency Tracts. Section 2(a) defines 'Agency Tracts' as to mean scheduled districts and included within the districts of Ganjam, Vizagapatnam and Godavari. Section 2(c) defines "hill tribes" as to mean any body or class of persons residents in the Agency Tracts that may from time to time be notified as such for the purpose of the Act by the Governor-in-Council (as it stood prior to Adaptation Order, 1937). Section 7 empowered the Governor-in-Council to make rules to carry out the purpose of the Act. In exercise of such power the Governor-in-Council issued Order No.187, Home (Judicial) dated 22.1.1918 making rules to regulate the transfer of land in the Agency tracts of Ganjam, Vizagapatnam and Godavari districts. By rule 1 thereof, the Hill Tribes for the purpose of the 1917 Act were notified separately for Ganjam, Vizagapatnam and Godavari districts. Four communities/castes were notified as Hill Tribes in Ganjam, whereas six communities were notified as Hill Tribes in Godavari districts. This included Malas and Madigas residing in Godavari district. What is interesting is, though as many as 40 communities in Visakhapatnam district were notified as Hill Tribes, Malas and Madigas are conspicuous by their absence in the list. Therefore, there cannot be any iota of doubt that Malas or Madigas residing in the district of Visakhapatnam were not notified as Hill Tribes for the purpose of the 1917 Act.
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> The original authority as well as the appellate authority, respondents 2 and 1 respectively, have mis-directed themselves in not considering the rules made by the Governor-in-Council under Section 7 of the 1917 Act. They, thereby, committed a grave error apparent on the facet of the record and proceeded on the footing that respondents 4 to 7 and their predecessors in title are Hill Tribes. The impugned order, for this reason, cannot be sustained."

We agree with the learned Single Judge that the sale transaction entered into between the parties in 1956 could not have been annulled by respondent No.2 after a gap of 33 years.

For the reason mentioned above, the appeal is dismissed.

G.S.SINGHVI, CJ

April 21, 2006

G.BHAVANI PRASAD, J.

GRR/ksld